

**AMANDA MICHAELS**  
Claimant

**COLONIAL MANOR**  
Respondent

**AMERICAN HOME ASSURANCE**  
Insurance Carrier

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Conversely, claimant contends she proved that she is in need of additional medical treatment for the June 5, 2001, low back injury that she suffered while employed by the respondent. Thus, claimant requests the Appeals Board (Board) to affirm the Order for Compensation.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the parties' briefs, the Board makes the following findings and conclusions:

Claimant injured her low back, on June 5, 2001, while working as a CNA for respondent. Respondent referred claimant for medical treatment on the day of the accident to Business Health Center located in Lawrence, Kansas. Claimant was first seen by Tell Copenig, M.D. He diagnosed claimant with muscular back pain. Dr. Copenig prescribed medication and returned claimant to modified work of lifting limited to 10 pounds, no repetitive bending or standing, not to assist with transferring patients, alternate sitting and standing as needed for pain control.

Claimant was next seen on June 11, 2001, at the Business Health Center. At that time, claimant was seen by another physician, Chris D. Fevurly, M.D. He continued claimant on anti-inflammatory medication and returned claimant to work with the same restrictions as previously imposed. During that visit, claimant testified that Dr. Fevurly gave her permission to also receive treatment for her low back injury through Dr. Brady, a chiropractor, who had previously treated claimant for back problems. But respondent admitted into evidence a letter from Dr. Fevurly dated August 22, 2001, that states that he told claimant he had no objection for her receiving chiropractic treatment for her low back injury. But he did not make a referral to the chiropractor. Dr. Fevurly also told claimant she would only be paid \$500 for the chiropractor treatment under unauthorized medical care.

Claimant did seek chiropractic treatment through Dr. Brady. He first saw claimant on June 11, 2001, and continued to see claimant through September 4, 2001. Claimant had to quit seeing Dr. Brady because respondent would not pay for the treatment and she could not afford to pay for the treatment on her own. Dr. Brady treated claimant with manipulation and instructed claimant in home exercises. He imposed work restrictions comparable to those imposed by Business Health Center.

Respondent terminated claimant from its employment on June 26, 2001. Edwin Alexander, respondent's administrator, who terminated claimant testified by deposition. He testified that claimant was terminated because she refused to perform work within her restrictions. Mr. Alexander testified that claimant told the charge nurse and also personally told him that the chiropractor who was treating her at that time said she could not do any work. Conversely, claimant testified the charge nurse tried to make her perform heavy work outside of her restrictions and she refused to do only the heavy work that was outside her restrictions.

After claimant was terminated on June 26, 2001, she saw Dr. Copenig on two other occasions, July 2 and 9, 2001. On July 9, 2001, Dr. Copenig determined claimant had met maximum medical improvement and released claimant to work without restrictions.

Dr. Copening also found that claimant had no permanent impairment as a result of her injury.

At the preliminary hearing, however, claimant testified she continued to have constant pain in her low back and occasional pain down her left leg. Claimant also admitted that she had helped move herself in August 2001 and had lifted some boxes that had not exceeded her 10 pound lifting restriction. After that move, claimant testified she did have some increased symptoms which included some left leg pain. But claimant also testified that since her June 5, 2001, work-related injury she had continued to have constant pain in her low back and on occasion left leg pain. There is no medical evidence contained in the preliminary hearing record that supports respondent's theory that claimant suffered a new and separate accident in August 2001.

The Board finds the preliminary hearing record does not prove that claimant suffered a new and separate accident and a resulting new injury when she lifted boxes while moving in August 2001. Claimant's testimony supports the conclusion that claimant only suffered a temporary flareup of her original June 5, 2001, work-related low back injury. Thus, the Board concludes claimant's permanent low back injury and continuing symptoms are the result of the June 5, 2001, work-related injury while claimant was employed by the respondent.

The respondent further argues that the ALJ exceeded his jurisdiction when he authorized Dr. Brady as claimant's treating physician and ordered respondent to pay Dr. Brady's previous chiropractic treatment bills as an authorized medical expense.

The Board's jurisdiction to review the ALJ's preliminary hearing findings is limited.<sup>1</sup> The preliminary hearing statute specifically gives the ALJ authority to grant or deny a request for medical treatment or payment of temporary total disability compensation to be in effect pending the conclusion of a full hearing on the claim.<sup>2</sup> Thus, even if the ALJ was wrong in appointing Dr. Brady as claimant's authorized treating physician and ordering the respondent to pay Dr. Brady's chiropractic treatment bill as an authorized medical expense, he did not exceed his jurisdiction.<sup>3</sup>

The Board concludes, as it has on numerous occasions, that it does not have jurisdiction, at this stage of the proceedings, to review an ALJ's preliminary finding in regard to granting or denying a request for medical treatment. Accordingly, the respondent's appeal is dismissed as to the issues of the ALJ's appointment of Dr. Brady

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<sup>1</sup> See K.S.A. 44-551(b)(2)(A) and K.S.A. 44-534a(a)(2).

<sup>2</sup> See K.S.A. 44-534a(a)(2).

<sup>3</sup> See Allen v. Craig, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

as claimant's authorized treating physician and the payment of Dr. Brady's chiropractic treatment bills as an authorized medical expense.

**WHEREFORE**, it is the finding, decision, and order of the Board that ALJ Brad E. Avery's October 30, 2001, preliminary hearing Order for Compensation is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 2001.

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BOARD MEMBER

c: Judy Pope Edwards, Attorney for Claimant  
Stephen P. Doherty, Attorney for Respondent  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director